

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 3:06CR20-01
and 3:08CV44
(CHIEF JUDGE BAILEY)

TYRONE EUGENE YATES,

Defendant.

**REPORT AND RECOMMENDATION THAT COURT ENTER AN
AMENDED JUDGMENT AND COMMITMENT ORDER**

I. Introduction

Defendant was the only Defendant in a four count superceding indictment charging him with offenses relating to the distribution of cocaine base. Defendant pleaded guilty to count four charging him with possession with intent to distribute two ounces of cocaine base. Defendant was sentenced to 188 months of imprisonment and 4 years of supervised release on February 26, 2007. On July 16, 2007, Defendant filed a Motion to Reinstate Appeal¹ which was referred to me January 28, 2008. The Government was directed to respond and an evidentiary hearing was set for May 12, 2008. Defendant also filed a Motion to Vacate, Set Aside or Correct Sentence Under § 2255² February 8, 2008. On May 9, 2008, counsel for Defendant filed an unopposed Motion for Entry of Amended Judgment and Commitment Order which contains a representation that the Government does not oppose an Amended Judgment and Commitment Order³ being entered.

¹ Doc. No. 40.

² Doc. No. 46.

³ Doc. No. 59.

II. Recommendation

Based on the foregoing, I recommend an Amended Judgment and Commitment Order be entered and that the Motions to Reinstate Appeal and Vacate, Set Aside or Correct Sentence be **DENIED AS MOOT.**

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: May 16, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE